

## Chapter 45 - Government Property (February 18, 2009)

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### Section 45.1 Providing Government Property under EPA Contracts

#### 45.1.1 PURPOSE

The purpose of this section is to provide uniform policies, procedures, and guidance to EPA personnel involved in providing Government Property and accomplishing contract property administration.

#### 45.1.2 BACKGROUND

The Federal Acquisition Regulation (FAR) on Government Property was revised in 2007. The effective date of the revision for FAR Part 45, Government Property is June 14, 2007. This revision removed the previous restriction on providing government property for contract performance. It allows the government to provide government property for contract performance, gives contracting officers more flexibility in their determination to provide property, and renders the class deviations for government property, which had been issued, obsolete. For this reason the class deviations were removed from the Acquisition Handbook Section 1.3.

#### 45.1.3 AUTHORITY/APPLICABILITY

This policy is in accordance with the Federal Acquisition Regulation (FAR), Part 45 Government Property.

The objective of this chapter is to attain efficient, effective, economic, and uniform management of Government property required for the performance of EPA contracts. It addresses the roles and responsibilities of the Contracting Officers (CO), Contracting Officer Representatives (COR), Contract Property Coordinator (CPC), Property Utilization Officers (PUO), and Fleet Managers responsible for providing, administering and disposing of Government property required for contract performance.

#### 45.1.4 DEFINITIONS

- A. Government Property Analysis Worksheet (GPAW). This worksheet is used by the CO, COR and PUO to determine if a contractor's request for Government Property is in accordance with FAR Part 45 and agency policy. The GPAW is located in Appendix 45.1C.
- B. Property Utilization Officer (PUO). The PUO promotes the acquisition and efficient use of EPA inventory by certifying whether or not like item(s) exist in section C of the GPAW. View the PUO list at: <http://intranet.epa.gov/oa/fmsd/property/prog-contacts.htm>.

- C. Contract Property Coordinator (CPC). The CPC administers contract requirements relating to contract property, provides technical expertise and assistance relative to contract property to the CO and COR, and makes recommendations to update Agency policies and procedures for FAR compliance. The CPC is assigned to the Office of Acquisition Management (OAM) Policy, Training and Oversight Division (PTOD).
- D. Fleet Manager(s). The Fleet Manager is assigned to the Office of Administrative Services' Office of Facilities Management and Service Division (FMSD). Fleet managers are responsible for ensuring that the acquisition, operation and disposal of motor vehicles comply with governing laws and regulations.
- E. Non-Passenger Motor Vehicles. Vehicles that have been acquired and are being used for special purposes other than carrying passengers. EPA may purchase and lease non-passenger motor vehicles.
- F. Passenger Motor Vehicles. Vehicles that are acquired for carrying passengers, such as sedans, passenger vans, and buses. Congress has only given EPA the authority to lease (See AH 31.2 for leasing procedures), but not, purchase passenger motor vehicles. (U.S. Code 31 §1343 and 40 §419)
- G. Green Fleets. Visit the "Greening the Government Website" at [http://intranet.epa.gov/intraosw/miswd/e\\_steward/print\\_versions/f\\_cat\\_03\\_02.htm](http://intranet.epa.gov/intraosw/miswd/e_steward/print_versions/f_cat_03_02.htm) for information on alternative fuels and selecting the most fuel efficient vehicles.

#### 45.1.5 POLICY

In accordance with FAR 45.102:

- (a) Contractors are ordinarily required to furnish all property necessary to perform Government contracts, unless, the following exceptions apply and the appropriate approval has been obtained (See AH 4.1 for approval levels).
- (b) Contracting officers shall provide property to contractors only when it is clearly demonstrated—
  - (1) To be in the Government's best interest;
  - (2) That the overall benefit to the acquisition significantly outweighs the increased cost of administration, including ultimate property disposal;
  - (3) That providing the property does not substantially increase the Government's assumption of risk; and
  - (4) That Government requirements cannot otherwise be met.
- (c) The contractor's inability or unwillingness to supply its own resources is not sufficient reason for the furnishing or acquisition of property.
- (d) "Exception." Property provided to contractors for repair or overhaul is not subject to the requirements of paragraph (b) of this section.

#### 45.1.5.1 PROCEDURES FOR PROVIDING PROPERTY

##### 45.1.5.1.1 CO Responsibilities

The CO is responsible for reviewing the contractor OR the program office request and making the determination to provide Government Property. The program office should perform a thorough analysis of the contract requirements to ensure that the request is valid. The CO may submit individual or class deviations, for instances not covered by FAR exceptions or EPA class deviations, for review by Acquisition Policy and Training Service Center and approval by the Head of the Contracting Agency (See AH 4.1 for approval levels). The decision charts located in Appendix 45.1A and 45.1B describe the process for each type of request; and the responsibilities of Agency personnel involved in the determination of whether or not to provide government property. The CO shall:

- 1) Perform an initial cursory review of the request for property and verify the request meets the FAR Subpart 45.102 and EPAAR 1552.245-70 requirements;
- 2) Ensure contracts are awarded and administered in accordance with applicable statutes, rules, regulations, policies, requirements of law, and Executive orders;
- 3) Ensure that the procurement requirements for acquisition of property have been met;
- 4) Forward the contractor's request and GPAW to the COR;
- 5) Return any requests that are incomplete;
- 6) Attach documentation to the GPAW, which fully supports the decision to approve or disapprove the request;
- 7) Conduct a cost analysis on contractor lease/purchase vs. Government lease/purchase;
- 8) Ensure that all property is added via a modification to the contract;
- 9) Provide written direction to the contractor, with copy to PUO authorizing use of existing Government property, OR allow for contractor acquisition in writing, OR reject contractor or program office request in writing stating reason(s);
- 10) Prepare a determination and finding (D&F) in accordance with FAR 1.704;
- 11) Complete an evaluation of the contractor's choice to lease or purchase the property, if the government disapproves the request;
- 12) Make final decisions regarding contract property discrepancies; and
- 13) Maintain the official contract files through contract closeout.

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##### 45.1.5.1.2 COR Responsibilities

- 1) Work with the Contracting Officer to evaluate the effect that furnishing property has on contract price;
- 2) Verify the technical requirement for the property;
- 3) Obtain PUO certification that requested or suitable like items are not available from EPA inventory;

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- 4) Review the contractor's request to make sure the request does not exceed the minimum requirements for performance under the contract;
- 5) Determine whether or not the quantity requested is essential for contract performance;
- 6) Notify the CO if property is available and promptly return the GPAW;
- 7) Complete the GPAW and forward the original to the CO, if the request for government property is initiated by the Program office;
- 8) Request PUO certification that Contract Acquired Property (CAP) item is not part of in-house inventory.

#### **45.1.5.1.3 PUO Responsibilities**

- 1) Ensure that property is used to the maximum extent possible throughout the Accountable Area (AA);
- 2) Shall verify no like item(s) exist in EPA inventory which may be utilized.

#### **45.1.5.1.4 Regional/ Office/Program Fleet Manager Responsibilities**

- 1) Determine if the property request is in accordance with federal environmental standards, [Executive Order \(E.O.\) 13423, "Strengthening Federal Environmental, Energy, and Transportation Management"](#) motor vehicle statutory guidance (31 U.S.C. §1343 and 40 U.S.C. §491), FAR Subpart 8.11, and meets General Service Administration (GSA) and Department of Energy reporting requirements.
- 2) Determine the best method for acquiring **non-passenger motor vehicles** by conducting a purchase/lease cost analysis.
- 3) Determine which source to purchase/lease **non-passenger motor vehicles** or which source to lease **passenger motor vehicles** from including:
  - GSA Fleet,
  - GSA Multiple Award Schedule (MAS) contracts under Federal Supply Schedule (FSS) 751, or
  - Commercial source.
- 4) Provide guidance to the CO, COR, and contractor on motor vehicle statutory guidance and regulations.
- 5) Implement the procedures and methods contained in this manual for surplus automotive equipment transfer and disposal.

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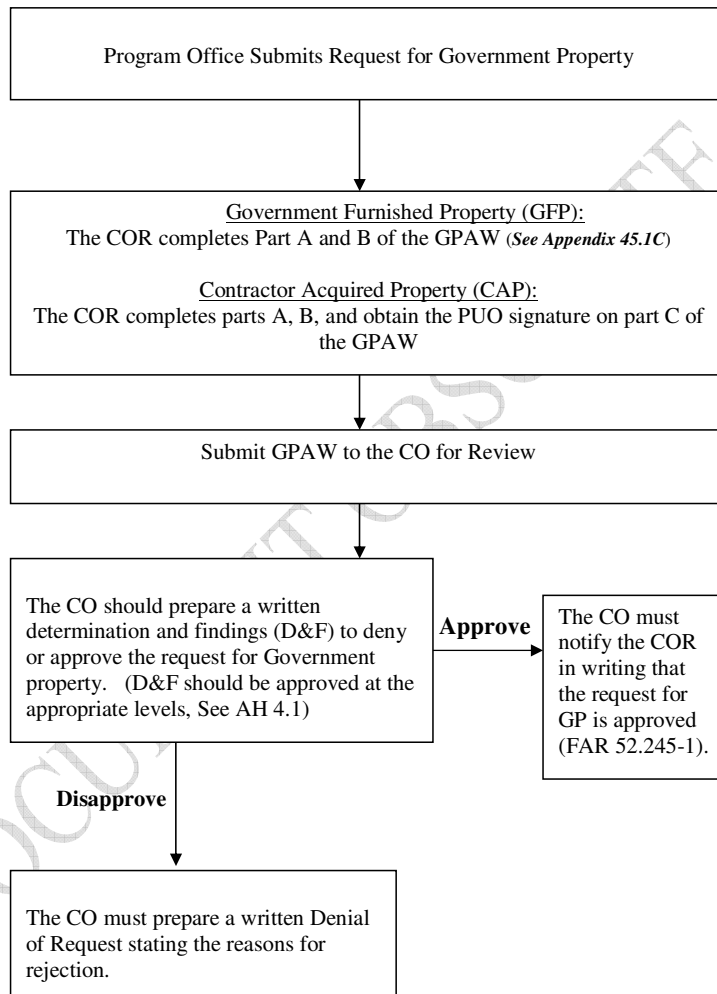
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#### **Regional Fleet Manager/Office Fleet Manager/Program Fleet Manager**

Coordinate with GSA regional and local offices for the use of temporary vehicles and related services, including plans for anticipated changes in requirements for GSA. Submit copies of regional fleet reports to the CPC and Agency Fleet Manager.

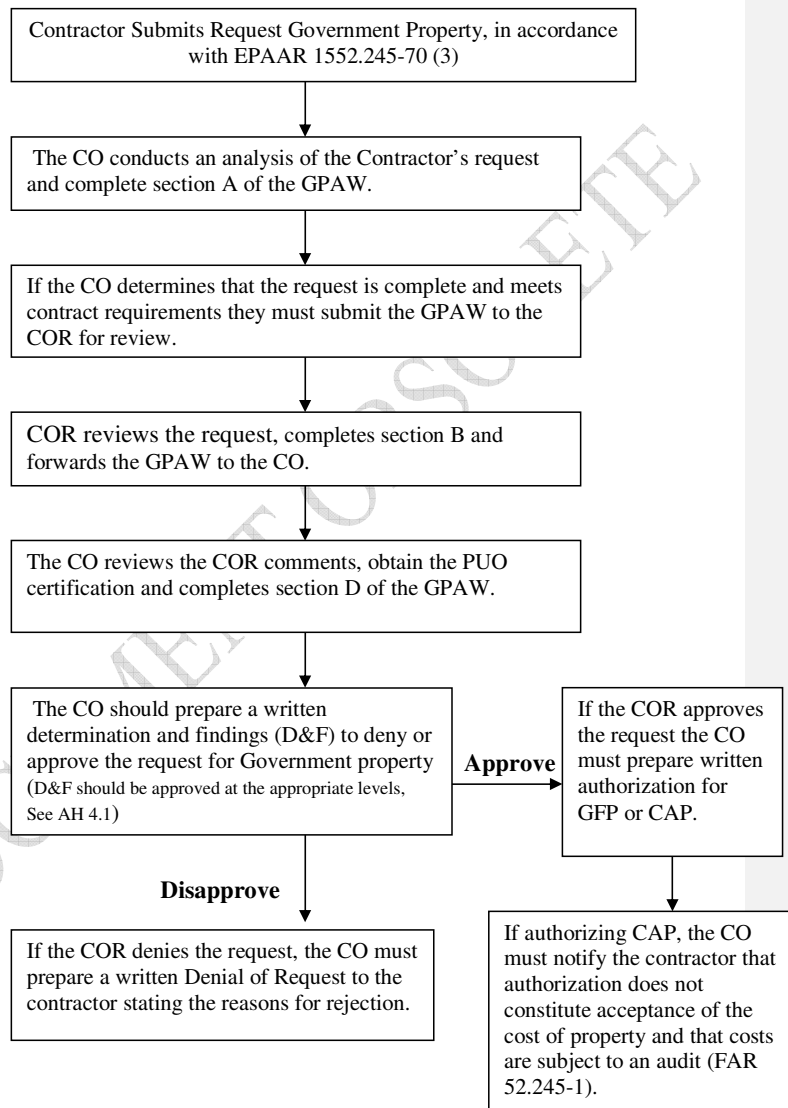
## Appendix 45.1A

### PRE-SOLICITATION AND PRE-AWARD



## Appendix 45.1B

### PRE-AWARD AND POST AWARD



## Appendix 45.1C

### GOVERNMENT PROPERTY ANALYSIS WORKSHEET

Contractor: \_\_\_\_\_ Contract No: \_\_\_\_\_ Date of Request: \_\_\_\_/\_\_\_\_/\_\_\_\_

**A. Contracting Officer Analysis (Contractor Request)** \_\_\_\_\_

**OR**

**Contracting Officer Representative Analysis (Program Office's Request)** \_\_\_\_\_

1. Is the property required as a direct component in the construction of a Superfund remedial action which is being specifically designed and constructed in accordance with an EPA requirement? Yes No

2. Does the request address all elements below: Yes No

- a) It is in the Government's best interest;
- b) The overall benefit to the acquisition significantly outweighs the increased cost of administration, including ultimate property disposal;
- c) Providing the property does not substantially increase the Government's assumption of risk; and
- d) Government requirements cannot otherwise be met.

3. Has the contractor submitted a complete request for Government Property? *(Refer to the list below as a basis for your answer)* Yes No

- An item(s) description, quantity and estimated cost.
- Certification that no like contractor property exists which could be utilized.
- A detailed description of the task-related purpose of the property.
- An explanation of the negative impact that would occur if the property is not provided by the Government.

4. If applicable, is the Contractor's property management system in accordance with industrial leading standards? Yes No NA

5. Has the Agency ever withdrawn approval of the contractor's property management system? Yes No NA

6. If the request is for a motor vehicle check with the Fleet Manager located in FMSD to ensure that it is in accordance with statutory guidelines (See CMM 45.1.5.1.4 for more information on Fleet Managers) Yes No NA

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Contract number

**B. Contracting Officer Representative Endorsement**

1. I have reviewed the request and determined that the request for property does not exceed the minimum contract requirements, that the purchase lease is necessary to achieve contract objectives and that the quantity is reasonable. (If you do not concur, please explain on the back.) Yes No

2. Existing property is available to fulfill this request. Yes No

Contracting Officer's Representative \_\_\_\_\_ Date \_\_\_\_\_

**C. Property Utilization Officer Certification**

There is no like item(s) in EPA's in-house inventory which may be used. (If like items exist, please explain on the back.)

Property Utilization Officer \_\_\_\_\_ Date \_\_\_\_\_

**D. Contracting Officer Final Determination (Select one of the following conclusions (check one)).**

The conclusion is supported by attachments to this form, i.e., cost analysis, narrative rationale.

1. As supported by A, B, and C, above, and the attached analysis:

\_\_\_\_\_ a. It is my determination that it is in EPA's best interest to provide Government Property (GP) to the contractor.

\_\_\_\_\_ b. It is my determination that it is in EPA's best interest to authorize the contractor to acquire property on behalf of the Government.

\_\_\_\_\_ c. It is my determination to deny \_\_\_\_\_ program's request / \_\_\_\_\_ contractor's request.

2. Other: \_\_\_\_\_

Contracting Officer \_\_\_\_\_ Date \_\_\_\_\_



## SECTION 45.2 PROPERTY ADMINISTRATION

### 45.2.1 PURPOSE

The purpose of this section is to provide guidance and procedures for EPA personnel involved in property administration.

### 45.2.2 BACKGROUND

Administration ensures that all government property in both the contractor's and its subcontractor's possession is controlled, protected, maintained, used and reported in accordance with regulatory and contractual requirements.

### 45.2.3 AUTHORITY/APPLICABILITY

This policy is in accordance with FAR Part 45, Government Property.

This section is applicable for Contracting Officers, Contracting Officer Representatives, and the Contract Property Coordinator.

### 45.2.4 DEFINITIONS

- A. Property Management System Analysis - Performed by the CPC to determine if the contractor property management system complies with the FAR and contractual requirements.
- B. Defense Contract Management Agency (DCMA) - DCMA is a Federal agency which provides property administration services for contracts. At EPA property administration functions for contracts are automatically delegated to the CPC. However, the CPC may re-delegate those functions to DCMA, under the existing Interagency Agreement.

### 45.2.5 POLICY

Procedures for delegation of property administration, monitoring contractor property management systems, and safe-keeping of audit records shall be developed and maintained.

#### 45.2.5.1 PROCEDURES

##### 45.2.5.1.1 CO RESPONSIBILITIES

- 1) Modify the contract when adding, transferring or disposing of government-property;
- 2) Submit electronic copies of all contracts, modifications, purchase orders, and Federal Supply Schedule (FSS) orders that include the Government property

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clauses to the CPC;

- 3) Include a copy of the property report in the contract file;
- 4) Resolve property related issues in accordance with established EPA procedures in conjunction with the CPC;
- 5) Notify the contractor, in writing, that the CPC audit discovered deficiencies in its property management system; and that correction is needed to comply with contractual requirements. The notice shall include remedies as allowed in FAR 45.105 (b). The CPC will verify whether or not the corrections have been completed. If the system deficiency(s) are not corrected the CPC will notify the CO, as stated in 45.2.5.1.2 (6).
- 6) Report untimely or unsatisfactory performance by DCMA to the CPC.

#### **45.2.5.1.2 CPC RESPONSIBILITIES**

All EPA contracts issued with Government Property, or those which include the Government Property clauses and have the potential to receive, purchase or acquire Government Property are automatically delegated to the EPA CPC for property administration. The delegation gives the CPC authorization to:

- 1) Perform a property risk assessment to determine if property functions will remain with EPA or re-delegate to DCMA;
- 2) Re-delegate property functions to DCMA, as needed. If the CPC re-delegates property functions to DCMA, the CPC must:
  - Prepare an "EPA Letter of Delegation for Partial Contract Administration".
  - Submit the Letter of Delegation to DCMA with a copy of the contract.
  - Forward a copy of the delegation to the Administrative CO.
- 3) Provide technical expertise and guidance to the CO, COR, and contractor personnel.
- 4) Maintain accurate records of Government Property audits.
- 5) Perform a property management system analysis; and provide a written notification to the contractor of the analysis results including:
  - the system status (compliant, non-compliant);
  - the stated reason(s) for non-compliance;
  - a request to correct deficiencies; and
  - the completion schedule.
- 6) Notify the CO if the system deficiencies are not corrected.
- 7) Obtain property reports and annual physical inventory reports. The property reporting period is October 1<sup>st</sup> through September 30<sup>th</sup> of each year. The reports must be submitted at the end of each fiscal year, and upon contract expiration or termination. In addition to the reports requirements of FAR 52.245-1 (f)(vi), the reports shall contain the elements in Appendix 45.2. The CPC review all property and physical reports to ensure that the reports represent an accurate and complete accounting of contractor held government property. Information contained on these reports is used to provide Financial Information to the OCFO for the Agency's financial statement.

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- 8) Investigate Loss, damage or destruction, or theft (LDDT) property contained on the reports and determine the corrective action needed.
  - 9) Forward the final EPA Property Report and working file to the CO when the contract expires or terminates.
  - 10) Resolve any concerns with DCMA performance as the COR and point of contact for the IA with DCMA. As such, the CPC will address any concerns with DCMA performance.

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## APPENDIX 45.2 GOVERNMENT PROPERTY REPORTS

In addition to the property reports requirement of FAR 52.245-1(f)(vi), the contractor is required to maintain, and report the following data elements, if applicable for EPA Government property (all elements are not applicable to material):

Name and address of the administrative Contracting Officer

Name of the contractor representative

Business type

Name and address of the contract property coordinator

Superfund (Yes/No)

Number of Subcontractor/Alternate Locations

*For Land, Other Real Property, Facilities, Special Test Equipment, Special Tooling, Agency Peculiar and Material provide the property classification, balance at the beginning and end of the period (in dollars and units), and additions and deletions (in dollars).*

LAND

OTHER REAL PROPERTY

FACILITIES

1. Items costing \$25,000 or more:
2. Items costing less than \$25,000:

SPECIAL TEST EQUIPMENT

1. Items costing \$25,000 or more:
2. Items costing less than \$25,000:

SPECIAL TOOLING

1. Items costing \$25,000 or more:
2. Items costing less than \$25,000:

AGENCY PECULIAR- including construction equipment and vehicles

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1. Items costing \$25,000 or more:
2. Items costing under \$25,000:

#### MATERIAL

#### DEFERRED MAINTENANCE, IF APPLICABLE

NOTE: For items comprising a system, which is defined as "a group of interacting items functioning as a complex whole," the contractor may maintain the record as a system, noting all components of the system under the main component, or as individual records. If maintained as individual records, the record should indicate the system name for that item. However, for the Annual Report of Government Property, the components must be reported as a system with one total dollar amount for the system if that system total is \$25,000 or more.

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## SECTION 45.3 Property Disposal

### 45.3.1 PURPOSE

The purpose of this section is to provide guidance to EPA personnel involved in the process of property disposal.

### 45.3.2 BACKGROUND

Disposal of government property can occur under the following circumstances:

- 1) Contract completion;
- 2) Termination of the contract for default or convenience of EPA; or
- 3) When the property is no longer serviceable or needed for contract performance.

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### 45.3.3 AUTHORITY/APPLICABILITY

This policy is in accordance with FAR Subpart 45.6 Reporting, Reutilization, and Disposal.

This section is applicable for Contracting Officers, Contracting Officer Representatives, Contract Property Coordinators, Property Administrators, Fleet Managers, and the Property Utilization Officers.

### 45.3.4 DEFINITIONS

- A. DCMA Plant Clearance Officer (PLCO). DCMA employee delegated responsibility to dispose of EPA property on behalf of the CO if property administration has been re-delegated to DCMA by the EPA CPC.
- B. Disposal. Action taken to physically transfer property from one's accountability.
- C. Standard Form 1428, Inventory Disposal Schedule. The form is located at <http://www.arnet.gov/far/current/html/FormsStandard54.html>
- C. Surplus Property. Property under the control of any federal agency that is not required for that agency's needs, as determined by the head of the agency or designee.
- D. Hazardous Material. Includes any material defined as hazardous under the latest version of Federal Standard No. 313, including revisions adopted during the term of the contract. FED-STD 313 indicates that an item or chemical is hazardous if it falls within one of the following four categories:
  - 1) Health or physical hazard regulated by OSHA in accordance with 29 CFR 1910.1200.
  - 2) Environmental hazard regulated by the U.S. Environment Protection Agency (EPA) in accordance with 40 CFR 302 and 40 CFR 372.

3) Environmental hazard regulated by the Department of Transportation in accordance with 49 CFR 100-180 or other organizations which poses a risk to public safety when transported or moved.

4) Special nuclear source, by-product material, or radioactive material subject to the regulations of the Department of Energy in accordance with 10 CFR or by other organizations.

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E. Loss, Damage, Destruction or Theft (LDDT). Property that is identified and classified as lost, stolen, damaged or destroyed under EPA contracts.

F. Plant Clearance Automated Reutilization Screening System (PCARSS). DCMA database used to track the reporting, screening, requisitioning and disposal of surplus Government property.

#### **45.3.5 POLICY**

Method(s) used to record, transfer, and report the disposal of Government property shall be developed and maintained.

##### **45.3.5.1 PROCEDURES**

###### **45.3.5.1.1 CO RESPONSIBILITIES**

- 1) Issue a modification to remove property from contract;
- 2) Credit contract or Superfund trust account:
  - a. If the SF 1428 inventory list contains Superfund property for transfer, credit the contract at fair market value, unless it will be used wholly or partially for Superfund purposes.
  - b. If the contract cannot be credited, funds must be credited to the Superfund trust account.
- 3) Receive closed property files as supporting documentation for the contract file.

###### **45.3.5.1.2 CPC RESPONSIBILITIES**

- 1) Receive SF1428 from contractor;
- 2) Forward copy of SF1428 to PUO;
- 3) Receive copy of shipping document from PUO, which show items returned from contractor;
- 4) Receive Final EPA Property report from contractor; and
- 5) Close the property file and submit to the CO.

#### **45.3.5.1.3 PUO RESPONSIBILITIES**

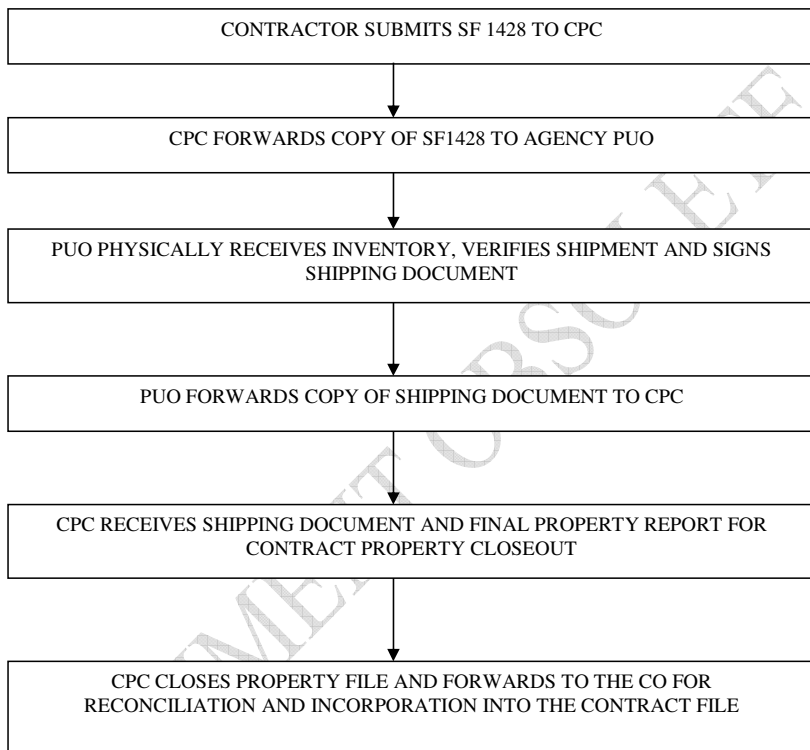
- 1) Receive copy of the SF1428 from CPC;
- 2) Receives the shipment, verify the inventory, and sign shipping documents;
- 3) Forward a copy of the shipping document to the CPC; and
- 4) Enter items into IFMS for reutilization within EPA.

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### Appendix 45.3A

#### DISPOSAL OF GOVERNMENT PROPERTY NOT DELEGATED TO DCMA



## Appendix 45.3B

### DISPOSAL OF GOVERNMENT PROPERTY DELEGATED TO DCMA

